

REMARKS

Applicants have carefully reviewed the Final Office Action mailed on January 28, 2010, the Advisory Action mailed April 13, 2010, and the Notice of Panel Decision from Pre-Appeal Brief Review mailed September 8, 2010. Applicants respectfully traverse (and do not concede) all objections, rejections, adverse statements, and adverse assertions made by the Examiner. With this amendment and request for continued examination, claims 1, 37, and 39 are amended. No new matter is added. Claims 1, 7, 37, 39, 40, 42 and 43 are presented for examination.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 37, 39, 40 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in U.S. Patent No. 5,376,094 in view of Savage in U.S. Patent No. 6,530,899. Applicants respectfully traverse the rejection.

Regarding claims 1, 39, 40, and 43, independent claim 1 is amended to recite that the snare loop is self-orienting and is configured to rotate independently of rotation of the shaft so that the snare loop can position itself within the anatomy of a patient. Independent claim 39 is similarly amended to recite that the snare loop is self-orienting and is configured to rotate independently of rotation of the shaft so that the snare loop can properly position itself.

Kline does not appear to teach or suggest this limitation. Indeed, Kline appears to disclose that rotation of the snare loop 20 is accomplished through rotation of the pulley 26. Indeed, Kline discloses that “great fidelity” is desired so that motion or resistance encountered by the snare is felt by the operator. See, for example, column 1, lines 28-31 and column 2, 25-31. In other words, Kline appears to disclose that precise control of the snare loop 20 by the clinician during actuation of the snare loop is desirable.

Applicants have unexpectedly discovered that rotational control of the snare is not required in order to properly align with the snare with, for example, a polyp. Because of this, it is not necessary to have a means at the proximal end of the shaft for rotating the shaft. Indeed, Applicants have discovered that rotation of the shaft from the proximal may actually be undesirable because it could result in the so-called “whipping effect”. See, for example, page 3, line 11 through page 4, line 2. In other words, Applicants have discovered that controlling the rotation of the shaft from the proximal end may not lead to the precision in control that is

disclosed as being desirable in the art and could actually lead to decreased precision.

Taking together the precision in control (e.g., "great fidelity") disclosed by the art and Applicants' unexpectedly discovery that rotational control at the proximal end of the shaft is not required and may actually lead to undesirable inefficiencies, Applicants respectfully submit that not only are features of claim 1 not disclosed in Kline, the results achieved by the claimed structural arrangement provide an unexpected result. Because of this, it would not be obvious to utilize the swivel structure disclosed by Savage in the Kline reference in order to arrive at the claimed invention. In other words, one of ordinary skill in the art would not have been motivated to use the swivel of Savage in the Kline device because such a utilization would be expected to undesirably reduce the precision in deploying and/or using the snare loop.

Based on the amendments to claims 1 and 39, as well as the above remarks, Applicants respectfully submit that amended claims 1 and 39 are patentable over the cited art. Because claims 40 and 43 depend from patentable claim 39, they are also patentable for the same reasons as claim 39 and because they add significant elements to distinguish them further from the art.

Regarding claim 37, this claim is amended to recite a handle attached to the shaft, that the handle is configured to shift the shaft between the first and second positions by longitudinal movement of an actuation member on the handle, and that longitudinal movement of the actuation member results in substantially equivalent longitudinal movement of the shaft. This differs from Kline, which discloses a pulley system that provides a two to one activation ratio. See, for example, column 4, lines 53-58. Based on this distinction, Applicants respectfully submit that amended claim 37 is patentable over Kline. Savage does not appear to overcome this deficiency. Consequently, Applicants respectfully submit that amended claim 37 is patentable over the combination of Kline and Savage, to the extent that such a combination is even possible.

Claims 7 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kline in view of Savage as applied to claims 1, 37, 39, 40 and 43 above, and further in view of Fleury Jr. in U.S. Patent No. 4,326,530. For the reasons set forth above, Applicants respectfully submit that claims 1 and 39 are patentable over Kline and Savage. Fleury, Jr. does not overcome the shortcomings of the cited art. Consequently, Applicants respectfully submit that claims 1 and 39 are patentable over the combination of Kline, Savage, and Fleury, Jr., to the extent that such a combination is even possible. Because claims 7 and 42 depend from patentable claims 1 and 39,

respectively, Applicants respectfully submit that these claims are also patentable over the cited art.

Conclusion

Reconsideration and further examination of the rejections are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney

Date: _____

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